APPENDIX A

SUPREME JUDICIAL COURT OF MASSACHUSETTS
SUFFOLK

WAREHAM EDUCATION ASSOCIATION & OTHERS [1]

v.

LABOR RELATIONS COMMISSION;
DAVID DUPUIS & OTHERS,[2] INTERVENERS.

Argued May 3, 1999

Decided July 15, 1999

Present: WILKINS, C.J., ABRAMS, LYNCH, GREANEY, FRIED, MARSHALL, & IRELAND, JJ.

LYNCH, J.

The Bridgewater Education Association (BEA), the Wareham Education Association (WEA) and the Fairhaven Education Association (FEA) (collectively, unions) appeal from the decision of the defendant, Labor Relations Commission (commission), requiring them to return certain agency shop fees [3] to nonunion members and precluding them from claiming such fees absent audited

---

[1] Bridgewater Education Association and Fairhaven Education Association.

[2] Eleanor Dupuis, Betsy Ann Wood, Charles Cipollini, and Peter Anthony. A motion to intervene was filed and allowed in the Appeals Court.

[3] Under G.L. c. 150E, § 12, if a public employee union represents nonunion members for collective bargaining purposes, the union may demand a fee for its agency representation.

financial statements. We granted the plaintiff unions' application for direct appellate review, and we now affirm the commission's ruling.

The interveners, David Dupuis; Eleanor Dupuis; Betsy Ann Wood; Charles Cipollini; and Peter Anthony (collectively, teachers), all teach in school districts represented by the unions. None of the teachers is a member of the respective union representing teachers in the collective bargaining process. In 1989 and 1990, the teachers filed charges with the commission challenging the unions' 1988-1989 agency fee demands as to amount and procedural compliance.[4] On the basis of these complaints, the commission issued separate two-count complaints against each union alleging that each union violated G.L. c. 150E, § 12, by demanding an agency service fee without providing the teachers with an independent auditor's financial statement of its revenues and expenses for the relevant period and by demanding an excessive fee. The commission bifurcated these two counts and, following a hearing, concluded that the unions' failure to provide audited financial statements was in violation of G.L. c. 150E, §§ 12[5] and 10(b)(1).[6] As a result of this con-

---

[4] Betsy Ann Wood also challenged the WEA service fee demands for the 1987-1988 school year.

[5] General Laws c. 150E, § 12, provides in relevant part:

"The commonwealth or any other employer shall require as a condition of employment during the life of a collective bargaining agreement so providing, the payment on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is later, of a service fee to the employee organization which in accordance with the provisions of this chapter, is duly recognized by the employer or designated by the commission as the exclusive bargaining agent for the unit in which such employee is employed; provided, however, that such service fee shall not be imposed unless the collective bargaining agreement requiring

clusion, the commission ordered the unions to dissolve the escrow fund in which the teachers' agency fees were being held, and return the withheld fees to the teachers.

---

its payment as a condition of employment has been formally executed, pursuant to a vote of a majority of all employees in such bargaining unit present and voting.

"Prior to the vote, the exclusive bargaining agent shall make reasonable efforts to notify all employees in the unit of the time and place of the meeting at which the ratification vote is to be held, or any other method which will be used to conduct the ratification vote. The amount of such service fee shall be equal to the amount required to become a member and remain a member in good standing of the exclusive bargaining agent and its affiliates to or from which membership dues or per capita fees are paid or received. No employee organization shall receive a service fee as provided herein unless it has established a procedure by which any employee so demanding may obtain a rebate of that part of said employee's service payment, if any, that represents a pro rata share of expenditures by the organization or its affiliates for:

"(1) contributions to political candidates or political committees formed for a candidate or political party;

"(2) publicizing of an organizational preference for a candidate for political office;

"(3) efforts to enact, defeat, repeal or amend legislation unrelated to the wages, hours, standards of productivity and performance, and other terms and conditions of employment, and the welfare or the working environment of employees represented by the exclusive bargaining agent or its affiliates;

"(4) contributions to charitable, religious or ideological causes not germane to its duties as the exclusive bargaining agent;

"(5) benefits which are not germane to the governance or duties as bargaining agent, of the exclusive bargaining agent or its affiliates and available only to the members of the employee organization."

[6] General Laws c. 150E, § 10(b)(1), provides: "It shall be a prohibited practice for an employee organization or its designated agent to . . . [i]nterfere, restrain, or coerce any employer or employee in the exercise of any right guaranteed under this chapter."

The material facts are not in dispute. The unions' agency fee demands for the years in question each included a letter stating that the fees were calculated using actual financial records of the particular local affiliate for the preceding school year. Each contained the following statement along with the respective treasurer's unnotarized signature: "In signing this form, I certify that the information contained herein is a true and accurate reflection of the [local union affiliate's] actual expenditures during the 1987-88 year to the best of my knowledge and ability. Signed under the pains and penalties of perjury." The demands also included an explanation of how the local affiliate calculated its share of the service fee, and a book entitled "MTA and NEA Combined Agency Service Fee Information for 1988-89 and Related Information." This book contained audits by a certified public accountant of the local affiliates' parent associations (the National Education Association and the Massachusetts Teachers Association). None of the demands included independently audited financial statements for the local affiliate requesting payment.

With regard to the years in question, the commission found the following facts: The FEA had an approximate income of $29,000 and represented 185 employees, of whom seven were nonmembers. The BEA had an approximate income of $17,900, and represented 116 employees, including two nonmembers. The WEA's approximate income for those years was $9,400, and it represented 205 employees, including one nonmember. The local portion of the fees sought from nonmembers did not exceed $45.

The commission further found:

> "There are three levels or kinds of service that an accountant or auditor can provide of an entity's

financial statements: a compilation, a review and an audit. The purpose of these services is to determine and disclose the level of reliance which can be placed on an entity's financial statements. Each level of service consists of three components: a report, a set of financial statements, and notes accompanying the financial statements. Although the financial statements and accompanying notes are generally the same for each level of service, the report differs significantly depending on whether the service performed is a review, a compilation or an audit.

"A compilation is the lowest level of service and offers no assurance that the numbers listed in the financial statements are fairly stated. In a compilation, an accountant receives financial information from the management of an entity, reviews the figures for clerical errors and records the figures in the form of financial statements. The accountant may also discuss the accounting policy with management and try to identify any issues that were not in conformity with generally accepted accounting principles and issues a report. The accountant is not required to make inquiries or perform other procedures to verify, corroborate or review information supplied by the entity.

"The review is the next level of service in which an accountant performs limited testing of the figures listed on the financial statements using analytical procedures and inquiries of management. The objective of a review is to provide a reasonable basis for an accountant to express limited assurance that there are no material modifications that should be made to the financial statements. A review requires no actual testing of documentation. Instead, the ac-

countant reviews the accounting books and journals and relies on verbal inquiries of management. Specifically, the accountant performs an analytical review of the listing of accounts at year end, as well as a comparative analysis from year to year to look for consistency or unusual changes. The accountant also compares actual results to the entity's budget. Depending on whether problems existed with the analysis, the accountant would look for schedules that were tied to the listing of accounts, i.e. at cash to see if a bank reconciliation was completed. Finally, the auditor generates the report, the financial statements, and the note disclosures. Because these procedures are used, the review is more reliable than a compilation.

"The audit is the highest level of service. The objective of the audit is to express an auditor's opinion on the extent to which the financial statements fairly present, in all material respects, the entity's financial position, results of operations and cash flows, in conformity with generally accepted accounting principles.

"An auditor employs the following procedure when performing an audit. First, the auditor reviews the entity's internal controls—its internal procedures and accounting system—to determine the level of risk and the auditor's level of reliance. Based on this information, the auditor determines which testing methodology to use, either the substantive approach or the compliance approach. In the substantive approach, the auditor places no reliance on internal controls and tests all the account balances in detail (over the materiality level) by physically viewing

the supporting documentation. For example, the auditor could review every check and invoice written on a particular account to ensure that the amounts matched and proper approval process was followed, using their judgment to determine how many accounts to review. The auditor could also review leases to determine whether payment matched the lease agreement. Conversely, in the compliance approach the auditor relies on internal controls and tests the accounting cycles, thereby reducing the amount of substantive testing that would be necessary.

"In addition, the auditor completes the confirmation process by sending confirmation requests to banks (for loans or cash), or others for accounts receivable and accounts payable. Finally, the auditor considers subsequent events, such as whether a loss of assets occurred after the fiscal period or whether litigation existed which would substantially change the financial picture.

"There are certain limitations inherent in the auditing process. For example, the American Institute of Certified Public Accountants (AICPA) Codification of Statements on Auditing Standards provides in part that:

" 'Because of the characteristics of irregularities, particularly those involving forgery and collusion, a properly designed and executed audit may not detect a material irregularity. For example, generally accepted auditing standards do not require that an auditor authenticate documents, nor is the auditor trained to do so. Also, audit procedures that are effective for detecting a misstatement that is unintentional may be ineffective for a misstatement that is intentional and is concealed through collusion between client personnel and third parties or among

management or employees or the client.'" (Footnotes omitted.)

Matter of Wareham Educ. Ass'n, Bridgewater Educ. Ass'n, Fairhaven Educ. Ass'n, 24 M.L.C. 23, 26-27 (1997). The commission noted that the cost of audits for local unions in Springfield, Chicopee, Newton, and Taunton ranged from $2,230.36 to $4,105. *Id.* at 27-28.

It is apparent from the commission's findings that, although there are inherent limitations, the audit provides significantly more verification and reliability than the other accounting options. It is also discernable that the cost of the audits would likely eclipse the agency fees available to the unions under G.L. c. 150E, § 12.

In *Chicago Teachers Union, Local No. 1 v. Hudson,* 475 U.S. 292, 310, 106 S.Ct. 1066, 89 L.Ed.2d 232 (1986), the United States Supreme Court held that "the constitutional[7] requirements for the Union's collection of agency fees include an adequate explanation of the basis for the fee, a reasonably prompt opportunity to challenge the amount of the fee before an impartial decisionmaker, and an escrow for the amounts reason-

---

[7] The Supreme Court has held that agency fees such as those authorized under G.L. c. 150E, § 12, implicate the First and Fourteenth Amendments to the United States Constitution. *Chicago Teachers Union, Local No. 1 v. Hudson,* 475 U.S. 292, 301-302 & n. 9, 106 S.Ct. 1066, 89 L.Ed.2d 232 (1986), citing *Abood v. Detroit Bd. of Educ.,* 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977). This is so because under the color of a State statute, nonmembers may be compelled against their wishes to associate with and perhaps to subsidize the union charged with representing nonmembers' interests in collective bargaining as a condition of public employment. *Chicago Teachers Union, Local No. 1 v. Hudson, supra.* Nevertheless, the Court has approved the constitutionality of such arrangements in acknowledgment of the government's strong interest in labor peace, so long as fees collected represent only the union's costs incurred in the collective bargaining process, and are not directed toward promoting the union's political agenda. *Id.*

ably in dispute while such challenges are pending." In a much discussed footnote apparently intended to clarify what constitutes "adequate disclosure," the Court stated that "[t]he Union need not provide nonmembers with an exhaustive and detailed list of all its expenditures, but adequate disclosure surely would include the major categories of expenses, as well as verification by an independent auditor." *Id.* at 307 n. 18, 106 S.Ct. 1066.

The unions claim that, because the cost of an audit would be unduly burdensome to these relatively small local affiliates, the commission erred in refusing to recognize an exception to the constitutional requirement set forth in *Chicago Teachers Union, Local No. 1 v. Hudson, supra.* The unions also contend that, even if no such exception exists, the commission exceeded its authority in issuing its remedial order that all funds should be returned to the dissenting teachers. We disagree and affirm the commission's decision.

1. Existence of small union exception to the audit requirement. The unions primarily argue that they should be excused from having to provide independently audited financial statements with their fee demands. Despite urging us to adopt this exception the unions cite no authority suggesting that the Supreme Court did not mean exactly what it said in *Chicago Teachers Union, Local No. 1 v. Hudson, supra.* Rather, the unions argue that such a requirement would make it impractical to collect the fees. It should be noted however that, although G.L. c. 150E, § 12, permits the collection of agency fees, it by no means requires them to do so.

Moreover, the United States Court of Appeals for the Ninth Circuit recently rejected with criticism the position the unions now urge us to adopt. *Prescott v. County of El Dorado,* 177 F.3d 1102, 1106-1108 (9th Cir. 1999).

In that case, the local union affiliate was only slightly larger than the unions here. *Id.* at 1104. The Federal District Court had concluded that the plaintiffs were not entitled to an audit in light of the local affiliate's size, reasoning that it could "not accept plaintiffs' position that a union must choose between an audit it cannot afford on the one hand, or being required to countenance [compelled union representation of nonmembers without compensation] on the other." *Prescott v. County of El Dorado,* 915 F.Supp. 1080, 1090 n. 15 (E.D.Cal. 1996). The Court of Appeals disagreed, stating:

> "We do not see how a mere review of the union's records can offer the 'verification' that the Supreme Court and we have spoken of. Audits are often required in business and public arenas, where others seek assurance that the reviewed books of an organization really do reflect the concrete world transactions to which they refer. It is just that kind of assurance that nonmembers are entitled to, even though it may prove somewhat costly to obtain it. As the Second Circuit has pointed out, it is not a question of balancing the cost to the union against the First Amendment rights of the fee payers. 'Excessive cost cannot form the basis for allowing the union or the government to avoid Hudson's requirement that the procedures used by the union to allocate bargaining and administrative costs be carefully tailored to minimize the intrusion on nonmembers' rights.' *Andrews* [*v. Education Ass'n of Cheshire,* 829 F.2d 335, 339 (2d Cir.1987)]. In short, a true audit was required."

Prescott v. County of El Dorado, supra, 177 F.3d at 1107-1108. Although the court in *Andrews v. Education Ass'n of Cheshire, supra* at 340 n. 2, expressly declined

to decide whether a small union's affairs could be so simple as to obviate the audit requirement, its reasoning adopted in *Prescott v. County of El Dorado, supra,* certainly suggests how these courts would resolve the conflict before us in the instant case.

Our own cases are in accord. In *Harrison v. Massachusetts Society of Professors/Faculty Staff Union,* 405 Mass. 56, 64 n. 8, 537 N.E.2d 1237 (1989), we stated quite unequivocally, "*Hudson* requires that the union's 'major categories of expenses' be listed 'as well as verification by an independent auditor.' *Chicago Teachers Union, Local No. 1 v. Hudson, supra* at 307 n. 18, 106 S.Ct. 1066." We said nothing to suggest that the Supreme Court's footnote is to be read narrowly, but rather suggested that the requirement applies, generally, to all union agency fee demands. Furthermore, in *Belhumeur v. Labor Relations Comm'n,* 411 Mass. 142, 145, 580 N.E.2d 746 (1991), *cert. denied,* 503 U.S. 1004, 112 S.Ct. 1759, 118 L.Ed.2d 423 (1992), although we rejected the fee payers' reading of *Chicago Teachers,* we reaffirmed the requirement of audited verification of expenses, reasoning: "An audit of major categories of expenses should tend to assure nonmembers that the union indeed did incur the expenses on which the agency fee was based." We further pointed out that "[t]he information that the union must provide under the *Hudson* opinion is not intended to be dispositive of any dispute. That information is designed only to permit an agency fee payer to decide whether to oblige the union to prove before an independent fact finder that the agency fee charged was properly determined" (emphasis added). *Id.* at 146, 580 N.E.2d 746. Thus, because the unions now before us were also parties in *Belhumeur,* we have previously acknowledged that they remain within the ambit of the Supreme Court's requirement that the verification of

major expenses by an independent auditor is a prerequisite to demanding agency fees under statutes such as G.L. c. 150E, § 12.

We see no basis for modifying the United States Supreme Court's express requirement that a union must accompany any demand for agency fees with an independently audited verification of its major expenses. *Chicago Teachers Union, Local No. 1 v. Hudson, supra* at 307 n. 18, 106 S.Ct. 1066. Succinctly put, there is no exception to *Hudson*'s audit requirement for small local union affiliates.[8]

2. Propriety of commission's remedy. The unions next challenge the commission's remedial order compelling them to return the fees to the teachers absent an audit. They rely on a number of Federal cases for the proposition that such an order would result in a windfall to the teachers and deprive the unions of funds to which they are unquestionably entitled. *See, e.g., Weaver v. University of Cincinnati,* 970 F.2d 1523, 1533-1534 (6th Cir. 1992), *cert. denied,* 507 U.S. 917, 113 S.Ct. 1274, 122 L.Ed.2d 668 (1993); *Lowary v. Lexington Local Bd. of Educ.,* 903 F.2d 422, 432-433 (6th Cir.), *cert. denied,* 498 U.S. 958, 111 S.Ct. 385, 112 L.Ed.2d 396 (1990); *Hohe v. Casey,* 956 F.2d 399, 415-416 (3d Cir.1992); *Gilpin v. American Fed'n of State, County & Mun. Employees,* 875 F.2d 1310, 1313-1316 (7th Cir.), *cert. denied,* 493 U.S. 917, 110 S.Ct. 278, 107 L.Ed.2d 258 (1989); *Laramie v. County of Santa Clara,* 784 F.Supp.

---

[8] In light of our conclusion that *Chicago Teachers Union, Local No. 1 v. Hudson, supra* at 307 n. 18, 106 S.Ct. 1066, requires the unions to provide an independent audit in connection with a demand for agency fees, the unions' argument that the commission acted arbitrarily and capriciously when it declined to follow dicta from its decision in *Malden Educ. Ass'n,* 15 M.L.C. 1429, 1435 n. 10 (1989), is without merit.

1492, 1501-1502 (N.D.Cal.1992). This reliance is misplaced. The unions refer only to cases in which the courts rejected dissenting nonmembers' claims to be excused from having to pay the agency fees even if a properly audited verification is supplied. As we interpret the commission's order, however, the unions are free to renew their demands for any fees to which they may be entitled once they comply with the requirements of *Chicago Teachers Union, Local No. 1 v. Hudson, supra. See Weaver v. University of Cincinnati, supra* at 1534 (rejecting plaintiffs' argument that denying full restitution would encourage unions to disregard *Hudson*'s reasoning that "by granting a preliminary injunction barring continuation of fee collecting when a defective notice has been sent, the courts have a quick and efficient remedy for such a *Hudson* violation"); *Laramie v. County of Santa Clara, supra* at 1500 (permanently enjoining defendants from "taking any action to withhold fair-share fees from plaintiffs' salaries until defendants establish and implement adequate procedural safeguards as described in *Hudson*" and its progeny).

Because it was proper in all respects, we affirm the commission's decision.

So ordered.

Justice FRIED participated in the deliberation on this case, but resigned before the opinion was issued.

APPENDIX B

COMMONWEALTH OF MASSACHUSETTS
BEFORE THE
LABOR RELATIONS COMMISSION

Case No. ASF-2097
2098
3015
2055
2056
2057

IN THE MATTER OF
WAREHAM EDUCATION ASSOCIATION,
BRIDGEWATER EDUCATION ASSOCIATION,
FAIRHAVEN EDUCATION ASSOCIATION, *et al.*

and

DAVID DUPUIS *et al.*

Date Issued: October 29, 1997

Commisioners Participating:

Robert C. Dumont, Chairman
Claudia T. Centomini, Commissioner

DECISION AND ORDER

Statement of the Case

Eleanor Dupuis, David Dupuis, Peter Anthony, Charles Cipollini and Betsy Ann Wood filed charges with the Labor Relations Commission (the Commission) alleging that affiliates of the Massachusetts Teachers Association/NEA [1] imposed a service fee for the 1988-89 [2] school year that was based on an invalid demand and that was in excess of the amount permitted by Section 12 of the Law. The Commission investigated the charges and issued separate Complaints of Prohibited Practice that were identical in all material respects. The two-count complaints alleged that the WEA, BEA and FEA violated Section 12 of M.G.L. c.150E (the Law) by demanding an agency service fee without providing the Charging Parties with an independent auditor's financial statement of its revenues and expenses for the relevant time period (Count I) and by demanding an amount in excess of the amount permitted by the Law (Count II). The Unions subsequently filed answers to the Commission's complaints.

On September 20, 1990, the Commission bifurcated the complaints and ordered a formal hearing for the allegation in Count I of the Complaint. Hearing Officer Judith Neumann held a hearing on November 15, 1990, after which the Unions filed a Motion to Reopen the Hearing. The Commission allowed the Motion and subse-

---

[1] The Wareham Education Association (WEA), the Bridgewater Education Association (BEA) and the Fairhaven Education Association (FEA).

[2] Betsy Ann Wood also challenged the service fee demanded by the Wareham Education Association/MTA/NEA for the 1987-88 school year.

quently held a second day of hearing.[3] The parties filed final briefs following the hearing.

The Charging Parties subsequently filed a Motion to Supplement the Record. The Union opposed the Charging Parties' Motion, and Commissioner Dalton held a hearing for the Commission to determine the admissibility and probative value of the evidence proffered by the Charging Parties. Following the hearing, the Union and the Charging Parties submitted supplemental briefs,[4] and former Commissioner William J. Dalton,[5] acting as an administrative law judge, issued Recommended Findings of Facts. Both parties filed Challenges to the Recommended Findings, and responses to the other parties' Challenges.[6]

---

[3] Hearing Officer Neumann left the Commission's employ in October 1992.

[4] The Unions filed a Motion to Strike the references in the Charging Parties' Supplemental Brief that refer to the Lexington Teachers Association as a "small" local union, and a statement describing the size of the Lexington Teachers Association's annual budget. Neither the size of the Lexington Teachers Association nor the size of its budget is a material fact in this case; consequently, we need not decide whether these references in the Charging Parties' Supplemental Brief should be stricken. The Motion is denied.

[5] Commissioner Dalton left the Commission's employ in August 1997.

[6] Subsequently, the Unions filed a Motion to Strike certain references to the Lexington Teachers Association (LTA) that the Charging Parties made in their supplemental brief. Specifically, the Unions objected to the inclusion of the size of the LTA's budget and the Charging Parties' characterization of the LTA as a "small" local union, arguing that this information was not included in the reported decision in the case of *Lowary v. Lexington Board of Education*, 903 F.2d (6th Cir. 1990) and should not be included in the Charging Parties' brief. We did not consider the size of the LTA, or the size of its budget in reaching our decision, and consequently, we need not decide whether this information was inappropriately included in the Charging Parties' supplemental brief. The Motion is denied.

Findings of Fact

Facts Pertaining to ASF-2097, 2098
Bridgewater Education Association

The Bridgewater School Committee is the representative of the Town of Bridgewater for purposes of collective bargaining with employees of the Bridgewater schools. The Bridgewater Education Association/MTA/NEA is an employee organization within the meaning of the Law and is the exclusive collective bargaining representative for the unit of employees that includes David Dupuis and Eleanor Dupuis. The bargaining unit represented by the BEA contained approximately 114 members and two non-members. The BEA and the School Committee are parties to a collective bargaining agreement effective from September 1, 1988 through August 31, 1991 which covers all members of the bargaining unit represented by the BEA. That contract contains an agency fee provision.[7]

David Dupuis and Eleanor Dupuis are public employees within the meaning of the Law. Mr. and Ms. Dupuis were not members of the BEA during the 1988-89 school year and were required to pay an agency fee under the contractual agency service fee provision. On or about June 21, 1989, the BEA demanded that Mr. and Ms. Dupuis pay an agency service fee in the amount of

---

[7] *Article XXVII Agency Fee*

1. The Committee agrees to require, as a condition of employment, that all employees covered by this Contract, except those employees certified as members to the Committee by the Association, pay annually or by dues deduction to the Association, as of the 30th day subsequent to the effective date of this Agreement, or 30 days subsequent to the execution of this Agreement, whichever is later, an Agency Service Fee equal to the amount required to become a member and remain a member in good standing of the exclusive bargaining agent to or from which membership dues are paid. . .

$275.45 for the 1988-89 school year of which $30.00 was payable to the BEA,[8] $186.95 was payable to the Massachusetts Teachers Association and $58.50 was payable to the National Education Association.[9] Mr. Dupuis and Ms. Dupuis challenged and continue to challenge the amount of the service fee demanded by the BEA for the 1988-89 school year.

The BEA's demand included a letter setting forth the amount of the service fee, the existence of a rebate procedure, the demand itself and the consequences of failure to pay the fee.[10] The letter also stated:

> The amount for this year was calculated after a review of the most recent financial reports available

---

[8] The Unions asked that the Commission modify the Findings of Fact to indicate the actual pro-rated chargeable amounts, and the fact that the fees were limited to the dues amounts, arguing that the reduction simplifies the task of verifying certain expenses. We decline to adopt this finding because the amount of chargeable expenses is not relevant to this decision, nor is the question of whether certain expenses are easier to verify than others.

[9] During 1988-89, BEA dues were $299.00, of which $30.00 was payable to the BEA, $191.00 was payable to the Massachusetts Teachers Association (MTA), and $78.00 was payable to the National Education Association (NEA).

[10] The Unions challenge this fact by asking the Commission to clarify that the demand letter disclosed to the Charging Parties the amount of the service fee due to each of the affiliated unions. This is one of many additional findings of fact that the Unions have requested for the purpose of gauging the sufficiency of the information provided regarding the local's expenditures. Our decision in this case is based on our interpretation of *Chicago Teachers Union vs. Hudson*, 475 U.S. 292 (1986) and its progeny, as well as the uniqueness of an audit, and does not depend on the condition of these Unions' financial records or the specific information contained in their demands. Consequently, we need not supplement or otherwise modify the Recommended Findings of Fact in which the demands, the Unions' financial records, or the treasurers' affidavits are described.

> to the Local, MTA, and NEA. A detailed explanation of the way the Local, MTA and NEA portions of the agency fee were calculated is enclosed. . .
>
> In accordance with a decision of the Labor Relations Commission, you are entitled, upon request, either to obtain from the Local a list of all expenditures or to examine the Local's financial receipts and record of expenses at a time convenient to you and to the Local. . . .[11]
>
> The financial information recorded in this explanation was prepared by the undersigned based on the actual financial records of the Association for the 1987-88 fiscal year. In order to determine if an expense was chargeable or nonchargeable, I relied on the criteria set forth in 456 CMR 17.04 and the instructions included herein. In signing this form, I certify that the information contained herein is a true and accurate reflection of the Association's actual expenditures during the 1987-88 year to the best of my knowledge and ability. Signed under the pains and penalties of perjury.[12]

The demand also included a "Local Association Agency Fee Explanation" describing how the Local calculated its share of the service fee, and a book entitled "MTA and NEA Combined Agency Service Fee Information for 1988-89 and Related Information." This book contained

---

[11] The Unions asked the Commission to modify the Findings of Fact to state that no evidence exists indicating that Mr. Dupuis or Ms. Dupuis ever requested a list of expenditures or the opportunity to examine the BEA's financial receipts and records. We decline to make this finding because an individual fee payor's willingness or reluctance to personally review a union's financial records is not germane to our decision.

[12] This statement was signed by the BEA treasurer but was not notarized.

a CPA's audit of the NEA and MTA. The BEA's demand did not provide Mr. Dupuis or Ms. Dupuis with an independent auditor's financial statement of its revenues and expenses for the fiscal year preceding the period for which the fee was demanded.

The financial records of the BEA include the following documents: [13]

A master list of expenses listing check numbers, payees and amounts
6 ledger pages
Approximately 68 check stubs listing the payee
Approximately 68 cancelled checks [14]
Approximately 26 records of deposits
1 savings withdrawal slip
Monthly bank statements
Record of income
Approximately 52 receipts or invoices [15]

---

[13] The Unions asked the Commission to add findings of fact further describing the condition of the Unions' financial records and noting the simplicity of verifying expenditures. As we discuss in the decision below, an auditor's ability to test and verify expense documentation is central to our decision and the record contains no evidence demonstrating that an individual fee payor could test this information in the same manner. Consequently, we decline to subjectively assess the ease with which an individual fee payor could verify union expenses, or describe the judgment a fee payor would be in a position to make after reviewing a union's financial records.

[14] Checks listed the payee and frequently contained a one or two word description; however, the meanings of the descriptions were not always readily apparent. Some of the checks were supported by disbursement records, in varying degrees of detail and formality, and others were not. In one instance, the payor wrote a check to himself, ostensibly for a "stipend".

[15] Some, but not all, of the invoices contained the check number of the check which paid the item. However, the master expenditure list identified the check that paid the invoice. By matching the checks and invoices it was possible to get a general idea of where most of the money was spent, although some of the descriptions were vague or unclear.

A passbook from the Bridgewater Credit Union
A two-page summary of operations prepared by the BEA treasurer

The BEA's total income for the 1987-88 school year was $44,794.40, and it forwarded $26,874.00 in dues and $444.44 in agency service fees to the MTA and NEA.

Facts Pertaining to ASF-3015, 2055, Wareham Education Association

The Wareham Education Association (WEA) is an employee organization within the meaning of the Law and is the exclusive bargaining agent for the unit of employees which includes Betsy Ann Wood (Wood). The bargaining unit represented by the WEA contained 204 members and one non-member. The Wareham School Committee represents the Town of Wareham in collective bargaining with employees of the Wareham schools. The WEA and the Wareham School Committee are parties to a collective bargaining agreement effective from September 1, 1988 through August 31, 1991. That contract contains an agency fee provision.[16]

Wood is a public employee within the meaning of the Law. Wood was not a member of the WEA during 1987-

---

16 *Article XXXVI Agency Fee*

A. The Committee agrees to require, as a condition of employment, that all employees covered by this Agreement, except those employees certified as members to the Committee by the Association, pay annually or by dues deduction to the Association, as of the thirtieth (30th) day subsequent to the effective date of this agreement, or thirty (30) days subsequent to the execution of this Agreement, whichever is later, an Agency Fee as determined in accordance with the applicable Rules and Regulations of the Labor Relations Commission relative to the Agency Service Fee. . . .

88 or 1988-89 and was required to pay an agency fee under the contractual agency fee provision.

On or about July 3, 1989, the WEA demanded that Wood pay an agency service fee in the amount of $262.73 for the 1988-89 school year of which $30.00 was payable to the WEA, $174.23 was payable to the MTA and $58.50 was payable to the NEA.[17] On or about October 13, 1989, the WEA demanded that Wood pay an agency service fee in the amount of $242.63 for the 1987-88 school year of which $29.18 was payable to the WEA, $157.57 was payable to the MTA and $55.88 was payable to the NEA.[18] Wood challenged and continues to challenge the amount of the service fee demanded by the WEA for the 1987-88 and 1988-89 school years.

The WEA's demands included letters setting forth the amount of the service fee, the existence of a rebate procedure, the demand itself and the consequences of failure to pay the fee. The letters also stated:

> The amount for [the 1987-88 and 1988-89] school years was calculated after a review of the most recent financial reports available to the Local, MTA, and NEA. A detailed explanation of the way the Local, MTA and NEA portions of the agency fee were calculated is enclosed. . . .
>
> In accordance with a decision of the Labor Relations Commission, you are entitled, upon request, either to obtain from the Local a list of all expenditures or to examine the Local's financial receipts and record

---

17 During 1988-89, WEA dues were $299.00, of which $30.00 was payable to the WEA, $191.00 was payable to the MTA, and $78.00 was payable to the NEA.

18 During 1987-88, Association dues were $283.00, of which $30.00 was payable to the WEA, $178.00 was payable to the MTA, and $75.00 was payable to the NEA.

> of expenses at a time convenient to you and to the WEA. . . .

The 1988-89 demand also contained the following language:

> The financial information recorded in this explanation was prepared by the undersigned based on the actual financial records of the Association for the 1987-88 fiscal year. In order to determine if an expense was chargeable or nonchargeable, I relied on the criteria set forth in 456 CMR 17.04 and the instructions included herein. In signing this form, I certify that the information contained herein is a true and accurate reflection of the Association's actual expenditures during the 1987-88 year to the best of my knowledge and ability. Signed under the pains and penalties of perjury.[19]

The demands for both school years also included a "Local Association Agency Fee Explanation" describing how the Local calculated its share of the service fee, and a book entitled "MTA and NEA Combined Agency Service Fee Information for 1988-89 and Related Information." This book contained a CPA's audit of the NEA and MTA. The demands did not provide Wood with an independent auditor's financial statement of its revenues and expenses for the fiscal years preceding the periods for which the fees were demanded.

The WEA's financial records consisted of:

> Ledger pages
> Approximately 40 cancelled checks, containing a one or two word description of the expenditure
> Approximately 48 check stubs

---

[19] This statement was signed by the WEA treasurer but was not notarized.

Approximately 21 receipts or invoices [20]
Monthly bank statements
Monthly treasurer's reports
An accountant's summary of operations.

The WEA's income in 1987-88 was $60,303.02 and it forwarded $50,881.00 in dues to the MTA/NEA.

Facts Pertaining to ASF-2056, 2057, Fairhaven Education Association

The Fairhaven School Committee is the representative of the Town of Fairhaven for purposes of collective bargaining with employees of the Fairhaven schools. The Fairhaven Education Association (FEA) is an employee organization within the meaning of the Law and is the exclusive bargaining agent for the unit of employees which includes Cipollini and Anthony. The bargaining unit represented by the FEA contained 178 members and seven non-members. The FEA and the School Committee were parties to a collective bargaining agreement effective from September 1, 1986 through August 31, 1989. That contract contained an agency fee provision.[21]

---

[20] Copies exist of most of the invoices, and most of the invoices list the check numbers for the check that paid the bill. There are some handwritten notes in lieu of invoices for some expenses with no supporting verification.

[21] *Article 32. AGENCY FEE*

32:1 The Committee agrees to require (during the term of this Agreement) that all employees covered by this Agreement except those employees certified to the Committee by the Association as being members of the Association as of the 45th day of their employment or the 30th day after the effective date of this Agreement, whichever is later, shall pay to the Fairhaven Educators' Association a service fee set by the Association which fee shall not exceed the amount of dues paid to the Association by a regular active member. . .

Charles Cipollini and Peter R. Anthony are public employees within the meaning of the Law. Cipollini and Anthony were not members of the FEA during 1988-89 and were required to pay a contractual agency service fee. On or about June 27, 1989, the FEA demanded that Cipollini and Anthony pay an agency service fee in the amount of $290.45 for the 1988-89 school year of which $45.00 was payable to the FEA, $186.95 was payable to the MTA and $58.50 was payable to the NEA.[22]

The FEA's demand included a letter setting forth the amount of the service fee, the existence of a rebate procedure, the demand itself and the consequences of failure to pay the fee. The letter also stated:

> The amount for this year was calculated after a review of the most recent financial reports available to the Local, MTA, and NEA. A detailed explanation of the way the Local, MTA and NEA portions of the agency fee were calculated is enclosed. . .
>
> In accordance with a decision of the Labor Relations Commission, you are entitled, upon request, either to obtain from the Local a list of all expenditures or to examine the Local's financial receipts and record of expenses at a time convenient to you and to the Local. . . .
>
> The financial information recorded in this explanation was prepared by the undersigned based on the

---

[22] During 1988-89, FEA dues were $314.00, of which $45.00 was payable to the FEA, $191.00 was payable to the MTA, and $78.00 was payable to the NEA.

On January 19, 1988, the FEA made a demand upon Anthony and Cipollini for an agency fee for the 1987-88 school year. On June 28, 1989, this 1987-88 agency fee demand was withdrawn and the charges filed by Cipollini and Anthony were subsequently dismissed.

> actual financial records of the Association for the 1987-88 fiscal year. In order to determine if an expense was chargeable or nonchargeable, I relied on the criteria set forth in 456 CMR 17.04 and the instructions included herein. In signing this form, I certify that the information contained herein is a true and accurate reflection of the Association's actual expenditures during the 1987-88 year to the best of my knowledge and ability. Signed under the pains and penalties of perjury.[23]

The demand also included a "Local Association Agency Fee Explanation" describing how the Local calculated its share of the service fee, and a book entitled "MTA and NEA Combined Agency Service Fee Information for 1988-89 and Related Information," which included a CPA's audit of the NEA and MTA. The FEA's demand did not provide Cipollini and Anthony with an independent auditor's financial statement of its revenues and expenses for the fiscal year preceding the period for which the fee was demanded.

Cipollini and Anthony challenged and continue to challenge the amount of the service fee demanded by the FEA for the 1988-89 school year. On March 10, 1988, the Charging Parties filed charges challenging the 1987-88 agency fee and the Commission held an investigation.[24] At the investigation Anthony, Cipollini and their attorney Bruce Cameron, were present. Pursuant to Cameron's request, the FEA brought its financial books and records to the investigation. However, the FEA refused to allow Cameron to review the books—allowing only Cipollini

---

23 This statement was signed by the FEA treasurer but was not notarized.

24 This demand was subsequently withdrawn.

and Anthony to review them. Both Cipollini and Anthony refused to review the books unless they could be assisted by counsel. Cipollini and Anthony never asked to review the FEA financial records related to the 1988-89 demand because they believed, based on the events related to the 1987-88 demand, that Cameron would not be able to assist them.[25]

The financial records of the Fairhaven Education Association consist of the following: [26]

Summary journals listing the year's expenditures; each expenditure lists a short description

Monthly treasurer's reports

Monthly bank statements and approximately 146 cancelled checks [27]

Bank deposit slips

Check stubs

A financial statement from accountant Robert Yeaton

An "expense voucher" form for each expenditure [28] and copies of the pertinent invoices and check stubs which are attached to the forms.

---

[25] We have modified this finding of fact, at the request of the Unions, to clarify the events in question.

[26] The Unions asked the Commission to find that their financial records provided sufficient information about the reliability of the expenditures included in the demand that non-members could make an informed decision to either challenge the fee or pay their fair share. We decline to adopt this finding because it is not factually or legally correct.

[27] Many checks contain no description of the expenditure.

[28] We have not relied on Appendix D in our findings of fact because the parties agreed that the form marked as Appendix D in the Recommended Findings was not the form used for most FEA expenditures.

The FEA's gross income for 1987-1988 was $65,000.00 and it paid $36,268.00 in dues to the MTA/NEA/BCEA.

Kinds of Audits and Procedures

There are three levels or kinds of service that an accountant or auditor can provide of an entity's financial statements: a compilation, a review and an audit. The purpose of these services is to determine and disclose the level of reliance which can be placed on an entity's financial statements. Each level of service consists of three components: a report, a set of financial statements,[29] and notes accompanying the financial statements. Although the financial statements and accompanying notes are generally the same for each level of service, the report differs significantly depending on whether the service performed is a review, a compilation or an audit.

A compilation is the lowest level of service and offers no assurance that the numbers listed in the financial statements are fairly stated. In a compilation, an accountant [30] receives financial information from the management of an entity, reviews the figures for clerical errors and records the figures in the form of financial statements. The accountant may also discuss the accounting policy with management and try to identify any issues that were not in conformity with generally accepted accounting principles and issues a report. The accountant is not required to make inquiries or perform other procedures to verify, corroborate or review information supplied by the entity.

---

[29] A financial statement includes a balance sheet, income statements and a change in fund balance statement.

[30] There is no difference in licensing between an auditor and an accountant but the terms differ according to which level of service is being performed.

The review is the next level of service in which an accountant performs limited testing of the figures listed on the financial statements using analytical procedures and inquiries of management. The objective of a review is to provide a reasonable basis for an accountant to express limited assurance that there are no material modifications that should be made to the financial statements. A review requires no actual testing of documentation. Instead, the accountant reviews the accounting books and journals and relies on verbal inquiries of management.[31] Specifically, the accountant performs an analytical review of the listing of accounts at year end, as well as a comparative analysis from year to year to look for consistency or unusual changes. The accountant also compares actual results to the entity's budget. Depending on whether problems existed with the analysis, the accountant would look for schedules that were tied to the listing of accounts, i.e. at cash to see if a bank reconciliation was completed. Finally, the auditor generates the report, the financial statements, and the note disclosures.[32] Because these procedures are used, the review is more reliable than a compilation.

The audit is the highest level of service. The objective of the audit is to express an auditor's opinion on the

---

31 In contrast, an audit confirms the verbal inquiries through supporting documentation.

32 The Charging Parties have asked us to add the following sentence to the Findings of Fact: [a]ll information included in those financial statements, including the note disclosures, are the representations of union officials and not of the auditor. The record, specifically, the *AICPA Codification of Statements on Standards for Accounting and Review Services*, AR Section 100.32(b), provides in pertinent part that "[a]ll information included in the financial statements is the representation of the management (owners) of the entity." We amend the Findings of Fact to add the quoted portion of the AICPA Codification.

extent to which the financial statements fairly present, in all material respects, the entity's financial position, results of operations and cash flows, in conformity with generally accepted accounting principles.

An auditor employs the following procedure when performing an audit. First, the auditor reviews the entity's internal controls—its internal procedures and accounting system—to determine the level of risk and the auditor's level of reliance.[33] Based on this information, the auditor determines which testing methodology to use, either the substantive approach or the compliance approach. In the substantive approach, the auditor places no reliance on internal control and tests all the account balances in detail (over the materiality level[34]) by physically viewing the supporting documentation. For example, the auditor could review every check and invoice written on a particular account to ensure that the amounts matched and proper approval process was followed, using their judgment to determine how many accounts to review. The auditor could also review leases to determine whether payment matched the lease agreement. Conversely, in the compliance approach the auditor relies on internal controls and tests the accounting cycles, thereby reducing the amount of substantive testing that would be necessary.

In addition, the auditor completes the confirmation process by sending confirmation requests to banks (for loans or cash), or others for accounts receivable and accounts payable. Finally, the auditor considers subsequent events, such as whether a loss of assets occurred

---

[33] If one person performs all the financial recordkeeping and there is no segregation of duties, an auditor would place little reliance in the entity's internal controls.

[34] "Materiality" is a term used to express an auditor's level of acceptable error in financial statements.

after the fiscal period or whether litigation existed which would substantially change the financial picture.

There are certain limitations inherent in the auditing process. For example, the American Institute of Certified Public Accountants (AICPA) *Codification of Statements on Auditing Standards* provides in part that:

> Because of the characteristics of irregularities, particularly those involving forgery and collusion, a properly designed and executed audit may not detect a material irregularity. For example, generally accepted auditing standards do not require that an auditor authenticate documents, nor is the auditor trained to do so. Also, audit procedures that are effective for detecting a misstatement that is unintentional may be ineffective for a misstatement that is intentional and is concealed through collusion between client personnel and third parties or among management or employees of the client.

Costs of Audits

There is no standard fee for auditing services. One approach is to estimate the number of hours within each line item for each level of service, apply a rate and compute the estimated cost. Occasionally, however, additional services such as accounting services, are necessary to complete the audit, and those services would increase the overall cost. Other considerations in the cost of an audit are the possibility of future business with the entity, the audit risk,[35] competitive forces affecting the profes-

---

[35] In his findings of fact, Commissioner Dalton stated that the term "audit risk" was not defined in the record. Both parties subsequently directed our attention to the *AICPA Codification of Statements on Auditing Standards* AU Section 312. AU Section 312.02 defines audit risk as the risk that the auditor may unknowingly fail to appropriately modify his opinion on financial statements that are materially misstated. The concept of audit risk is further defined and explained in the remainder of Section 312.

sion and the client's ability to generate the necessary schedules.

Auditing procedures do not differ based on an entity's annual income; consequently, the cost of an audit would be the same for a union with a small income as it would be for a union with a larger income.

Actual Costs of Audits:

In 1989, the accounting firm of Daniel Dennis & Company audited the financial statements of the local unions in Springfield, Chicopee, Newton and Taunton and charged the following fees: [36]

Springfield—$3,460.74
Chicopee—$2,811.50
Newton—$2,230.36
Taunton—$4,105 [37]

The MTA subsequently paid for these audits.[38]

The March 27, 1991 Letter

Charles Baldwin (Baldwin) has been employed by the MTA since 1974 as a regional services consultant. In

---

[36] The Charging Parties asked us to add to the findings of fact, the cost of the Malden audit and the number of audit hours required for each of the Springfield, Chicopee, Newton, Taunton and Malden locals. We did not consider the condition of these unions' financial records in reaching our decision; consequently, the number of hours required to audit these locals' financial statements is not a material fact. We decline to add the cost of the Malden audit because that evidence is superfluous.

[37] The cost of this audit included fees for accounting services. The accounting services were necessary to bring the records to the point where they could be audited.

[38] As of April 27, 1992, it was the only time that the MTA paid for audits for those unions.

that capacity, he provides advice and counsel concerning collective bargaining and member advocacy issues to various MTA affiliated local unions. His specific duties include serving as the chief spokesman at negotiating sessions, representing local unions in unfair labor practice cases and arbitrations, advising local unions on grievances and unfair labor practice cases and helping to process grievances. He also serves as a liaison between local unions and the MTA. Baldwin is not a CPA, has no background or degree in accounting and is unfamiliar with the different levels of service that an auditor or an accountant can provide.

In November of 1990, Baldwin discovered that the treasurer of the Springfield Education Association (SEA) overpaid himself a stipend.[39] The total amount of the overpayment was $180.00. Baldwin informed the SEA president of this action and they confronted the treasurer on or about the following day. The treasurer confirmed the overpayment, relinquished his union office keys and submitted a resignation in which he included a promise not to run for union office again.[40]

In March of 1991, the president of the Pathfinder Teachers Association (PTA) told Baldwin that the treasurer of the PTA had five checks from the School Department sitting on his bureau at home, and he had not de-

---

[39] The Unions asked us to delete the names of the two local unions whose circumstances prompted Charles Baldwin to write the March 27 letter. Although the identity of these local associations is irrelevant to our decision, we decline to sanitize Commissioner Dalton's description of the events because it is not the Commission's practice to purposely withhold the identity of entities or individuals involved in wrongdoing.

[40] The Charging Parties asked us to add additional facts to this paragraph regarding any subsequent MTA or SEA investigation into the activities of the SEA treasurer in prior years. The requested facts are not germane to our decision and are unnecessary.

posited those checks.[41] The PTA president immediately secured the treasurer's resignation, including a promise not to run for union office again, took possession of the checks and deposited them into the PTA's bank account.

Baldwin discussed these incidents with CPA Michael O'Neil, MTA Director of Affiliate Services Robert Bonazzi, MTA General Counsel Ann Clarke and MTA Regional Manager Ralph Flynn. On March 27, 1991, he wrote the following letter to MTA Executive Director-Treasurer Edward Sullivan: [42]

> During November of 1990 and again in March of 1991, I was forced to play a significant role in removing from office two local treaurers. One was removed for malfeasance and the other for nonfeasance. These experiences were personally unpleasant and professionally disturbing.
>
> As a result of speaking with Mike O'Neil from our C.P.A. firm during the March incident, I became more concerned. Mike ran off a list of six other locals that apparently had suffered similar problems. I have talked to Bob Bonazzi on the telephone about this, but I also felt compelled to write to you.
>
> There are many obvious consequences to our locals and to MTA when local treasurers disregard their fiduciary responsibilities and obligations. It seems to me that we need to take some steps to protect our members, our locals and MTA from this type of financial danger.

---

[41] The Unions challenged this finding of fact and we have modified it based on the record evidence.

[42] When Baldwin wrote the letter, he did not know if an audit would expose these kinds of incidents, but believed that an audit might prevent their recurrence. O'Neil did not suggest this to Baldwin during their previous conversation.

One way of helping would be to make it disadvantageous for our locals not to have their books audited each year. We could require that as a condition of receiving local office support and the bonding of the local treasurer that each local submit proof of an annual audit. The proof could be the front page of the auditor's report. (This wouldn't result in the local opening their books to MTA, which I think could be politically messy).

This is only one way of trying to protect everyone, and it may be unworkable or politically impractical. I am sure there must be other ways as well. But I am concerned and felt an obligation to bring it to your attention.

I am copying this letter to Ann Clarke and Ralph Flynn because I have also discussed the problem with them.

P.S. On the advice of Ann Clarke, the members in both locals are not aware of the real reasons for the treasurers resignations. Only certain officers in both locals know the truth in order to preserve confidence in the Association. Therefore, please do not divulge the identity of the two locals without first contacting me. Hopefully, you will not have to divulge the identity in any event.

The Relationship Between The Locals, the MTA and NEA.

Local unions affiliated with the MTA and NEA [43] collect dues for the MTA and NEA from their members and transmit dues to them. If the dues have not been

[43] The NEA is a nonprofit corporation incorporated under a special act of the United States Congress.

duly transmitted to the MTA, any members elected as a delegate to the MTA convention will not receive credentials and will not be seated at the annual meeting.

The MTA offers a local support program to all local affiliated associations who comply with specified requirements.[44] This program provides a limited amount of financial support from the MTA in order to defray part of the cost of operating local associations. The amount of support is based on the local dues—the higher the dues, the higher the reimbursement, up to a maximum of $20 per member and 50% of their office expenses. Specifically, office support is available to offset the cost of the expenses in the following categories:

1. office-related expenses: (rent, telephone, utilities, equipment, office supplies, printing, insurance, paper, clerical services, payroll taxes and audit costs).

2. compensation paid to local officers, committee chairs and committee members.

3. conferences: registration fees at MTA-approved conferences and hotel room costs at the Annual Meeting.

In 1987-88, the Fairhaven Education Association, Bridgewater Education Association and Wareham Education Association received local support.[45]

---

[44] To receive local office support, the associations must annually certify the amount of their dues and expenses as well as certify that the financial statements have been audited or reviewed. They must also submit their per capita dues and requests for reimbursement on a quarterly basis and certify the amount of local dues for the succeeding fiscal year on or before September 15. The local office support guidelines also contain notification that the MTA reserves the right to audit the local's records in the event MTA deems it necessary.

[45] We have modified this finding to accurately reflect the record evidence.

In 1988-89, the MTA was the statewide affiliate of 297 local unions.[46] Of these, 30 had income in excess of $25,000 per year. The largest annual local income was $311,172 and the smallest annual local income was $320.00. Eight locals wrote more than 400 checks per year, nine wrote more than 350, thirteen wrote more than 300, fifteen wrote more than 250 and nineteen wrote more than 200.

The NEA has a "uniserve" program whereby the NEA provides grants to its state affiliates to assist in funding staff representatives whose responsibilities are to implement, improve and coordinate programs of the NEA. The NEA also provides a bonding program for local treasurers.

The MTA and NEA Combined Agency Service Fee Information for 1988-89 and related information disclosed that the MTA had a total of 60,577 full-time equivalent members and agency fee payers and the NEA had a total of 1,824,500 members. MTA's income was $12,973,-612.00 and NEA's income was $117,901,750.

DECISION

M.G.L. c. 150E, Section 12, as limited by the First Amendment to the United States Constitution, permits public sector unions to collect service fees from non-members to cover their pro rata share of the costs of collective bargaining and contract administration. *Springfield Education Association v. James Belhumeur et al.*, 23

---

[46] The Charging Parties asked us to add to the findings of fact, information pertaining to the number of MTA affiliated locals whose collective bargaining agreements do not contain an agency service fee provision, and the relationship between a local union's size and the existence of a service fee provision in its bargaining agreements. Because the number of local unions ungoverned by agency service fee provisions is not probative of any issue in this case, we decline to make these additional findings.

MLC 233, 234 (1997); *Lyons v. Labor Relations Commission*, 397 Mass. 498 (1986). However, a union demanding a service fee from non-members must satisfy constitutional and statutory requirements. First, the union must provide an escrow procedure for all amount charges and a rebate procedure, at the time the fee is demanded, that provides for prompt adjudication before a neutral arbitrator. The service fee demand must conform to the requirements of Commission Rule 17.03 (456 CMR 17.03) and must be accompanied by sufficient information to allow the fee payor to determine whether the fee payor should challenge the fee. Finally, the amount of the fee must be calculated correctly based on chargeable expenses. *School Committee of Greenfield vs. Greenfield Education Association*, 385 Mass. 70 (1982); *Malden Education Association*, 15 MLC 1429 (1989).

Here, we must determine what information should accompany a service fee demand. In *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 307 n.18 (1986), the United States Supreme Court stated that "[t]he Union need not provide non-members with an exhaustive and detailed list of all its expenditures, but adequate disclosure surely would include the major categories of expenses, as well as verification by an independent auditor." In this decision, we shall consder whether these local unions were required to provide a local audit along with their service fee demands.

The Commission addressed this general issue in *Malden Education Association*, 15 MLC 1429 (1989) when it considered whether the Malden Teachers Association violated the Law by failing to provide adequate, audited financial information about the agency service fee to fee payor Joseph O'Connell. Consistent with its practice of applying Section 12 of the Law constitutionally, the Com-

mission considered the amount and kind of information that Section 12 requires unions to provide with the demand. The Commission held that *Chicago Teachers Union v. Hudson* requires a union to provide, *inter alia*, a copy of an independent auditor's financial statement of revenue and expenses for the fiscal year preceding the period for which the fee is demanded. However, in a footnote, the Commission suggested that small unions may satisfy this disclosure requirement by supplying to fee payers a sworn affidavit from a responsible union officer, attesting to the accuracy of the figures underlying the union's fee calculations, and written assurance of either a list of the union's expenditures or access to the union's financial receipts and expense records. *Malden*, 15 MLC at 1435, n.10. The Unions have cited this portion of the decision as the basis for not supplying an audited financial statement with their service fee demands.

Courts, as well as the Commission, have recognized the financial burden that an audit could place on a union. In *Sheridan v. Intern. Broth. Electrical Workers, Local 455*, 940 F.Supp. 368, 375 (D. Mass. 1996), the District Court for the First Circuit noted that giving fee payors adequate financial disclosure may be time consuming and expensive. Nevertheless, courts have held that verification by an independent auditor is a binding, constitutional requirement notwithstanding the potentially onerous financial implications, *Reese v. City of Columbus*, 826 F. Supp. 1115, 1119 (S.D. Ohio 1993) *aff'd. in part, rev'd. in part on other grounds*, 71 F.3d 619 (6th Cir. 1995); *Browne v. Wisconsin Emp. Relations Comm'n.* 485 N.W. 2nd 376, 394 (1992); *Sheridan*, 940 F. Supp. at 377. and have declined to exempt small unions from this rule. *Reese*, 826 F. Supp. at 1119, *citing Lowary v. Lexington Local Bd. of Educ. (Lowary II)*, 903 F.2d 422 (6th

Cir.), *cert. denied*, 498 U.S. 958 (1990).[47] The rationale for these decisions stems, in large part, from the courts' reluctance to balance the competing interests of the unions and fee payors or to subordinate the fee payors' constitutional rights to the unions' financial interests. *See Andrews v. Education Association of Cheshire*, 829 F.2d 335, 340 (2d Cir. 1987).

In addition, courts have recognized the important and unique role that an independent auditor plays in ensuring that fee payors have sufficient information to gauge the propriety of a union's fee. Specifically, an auditor ensures that the expenditures that the union claims it made for certain expenses were actually made for those expenditures, *Andrews v. Education Association of Cheshire*, 829 F.2d at 340, and the auditor's ability to test and verify expenditures is a critical concern. *Gwirtz v. Ohio Education Assoc.*, 887 F.2d 678, 681 (6th Cir. 1989), *cert. denied*, 494 U.S. 1080 (1990). In *Tierney v. City of Toledo ("Tierney III")*, 135 LRRM 2801, 917 F.2d 927 (6th Cir. 1990), the appeals court remanded the case to a magistrate to determine whether the auditor utilized adequate procedures to verify the union's expenses; reasoning that "[d]isclosure of the major categories of expenses and the methodology of the agency fee calculations means

---

[47] Generally, courts have declined to allow local unions to use a "local presumption" to avoid providing detailed audited financial statements to non-members. *See Reese v. City of Columbus*, 826 F. Supp. 1115 (S.D.Ohio 1993); *Hohe v. Casey*, 956 F.2d. 399 (3rd Cir. 1992). *But see Browne v. Wis. Emp. Relations Com'n.*, 485 N.W. 2nd 376 (1992) (Modified local presumption sufficient where an independent auditor verifies that locals' expenditures always have a lesser percentage of nonchargeable expenses than the statewide affiliate.) A local presumption is a presumption that the local union's percentage of chargeable activities is at least as great as the percentage of chargeable activities of the local's statewide affiliate.

very little if the non-members cannot have some level of confidence in the verification of the expenditures." The appeals court for the District of Columbia Circuit expressed a similar sentiment in *Ferriso v. N.L.R.B.*, 156 L.R.R.M. 2321, 2324 (1997), a case arising under the National Labor Relations Act, by stating that ". . . non-members cannot make a reliable decision as to whether to contest their agency fees without trustworthy information about the basis of the union's fee calculations . . . and an independent audit is the minimal guarantee of trustworthiness." An individual fee payor with access to all of the union's checks and invoices may be able to review the union's expense information, but there is no evidence in the record before us that they could verify or test the documentation the way an auditor could.

Because an auditor's ability to test and verify expense documentation is a paramount concern, we reject the Unions' argument that a review, rather than a full audit, is constitutionally sufficient. In a review, an accountant relies on analytical procedures and inquiries of management to determine the level of reliance to place on financial statements, and performs no actual testing of documentation. Conversely, an auditor tests and verifies documents as a basis for an opinion on financial statements. *Contra. Prescott v. County of El Dorado*, 915 F. Supp. 1080 (E.D. Cal. 1996) (District Court upholds the constitutionality of a review.) The Unions also argue that a separate audit of the locals' expenses is unnecessary because the locals' chargeable expenses constitute a minuscule fraction of the combined chargeable expenses of all three affiliated unions, and because the majority of the chargeable expenses were verified in the MTA and NEA audits. This argument is meritless. None of the locals' expenses were verified in the MTA or NEA audit and the size of the local portion of the combined chargeable ex-

penses is as constitutionally insignificant as the size of the local itself.

As we stated in *Springfield Education Association v. James Belhumeur et al.*, 23 MLC 233, 236 (1997), we must recognize and accommodate divergent interests when interpreting and applying the Law: in this case, the fee payors' quest for sufficient information and the unions' desire to preserve their financial resources. We hold today that Section 12 of the Law requires unions, regardless of size, to provide an audit from an independent auditor along with their service fee demands, and that countervailing financial considerations do not justify an exception to this rule.[48]

We agree with the Second Circuit that *Hudson* procedures are to be accorded all non-members regardless of whether the union believes them to be excessively costly. *Andrews v. Education Association of Cheshire*, 829 F.2d at 340. However, we recognize that a full audit may encompass procedures and issues, like a union's income or assets, that exceed the scope of a fee payor's concern and we agree that "[a] union need not engage its auditors to perform the highest possible level of audit service." *Sheridan*, 940 at 377, *citing Gwirtz v. Ohio Educ. Ass'n.*, 887 F.2d 678, 680 (6th Cir. 1989) *cert. denied*, 494 U.S. 1080 (1990). The primary responsibility of an auditor in this context is to verify a union's calculations and disbursements. *Sheridan* at 377; *see also Belhumeur v. Labor Relations Commission*, 411 Mass. 142, 145 n.4 (1991) (The verification requirement seems to be merely verification of the major categories of expenses). The record in

---

48 We decline to follow any contrary dicta contained in the *Malden* decision and therefore do not address the Unions' arguments concerning the standard by which to determine which unions merit the *Malden* exemption.

this case did not contain evidence concerning whether an audit can be limited in scope, or whether an auditor can express an opinion only on specified elements in a financial statement; [49] therefore, we decline to state whether a limited audit would be sufficient. We hold only that the demands at issue were invalid because the locals' expenditures were never audited, and we leave to another case, a determination of whether a limited audit or special auditor's report is permissible under the Law.

CONCLUSION

For the foregoing reasons, we find that the Unions violated Sections 12 and 10(b)(1) of the Law by failing to provide the Charging Parties with a local audit for the fiscal years preceding the periods for which the fees were demanded.

ORDER

WHEREFORE, based upon the foregoing, it is ORDERED that the Bridgewater Education Association, the Fairhaven Education Association and the Wareham Education Association [50] shall:

1. Cease and desist from requiring the Charging Parties to pay an agency service fee for the 1988-89 school year based on the invalid demands.
2. Not seek the discharge of or any other sanction against any Charging Parties for failing to pay

---

[49] The *AICPA Codification of Statements on Auditing Standards* provides procedures in AU Action 622 for "Special Reports—Applying Agreed-upon Procedures to Specified Elements, Accounts or Items of Financial Statement." However, there was no witness testimony in the hearing explaining the feasibility of using special reports in the agency service fee context.

[50] This remedy shall also apply to the agency service fee that the WEA demanded of Betsy Ann Wood for the 1987-1988 school year.

an agency service fee for the 1988-89 school year that was based on the invalid demands.

3. Release to the Charging Parties all of the monies held in joint escrow, plus all accrued interest to the date of the dissolution of the escrow account for the agency service fees for the 1988-89 school year.
4. Post in all places where notices are normally posted for employees represented by the Associations, and leave posted for a period of not less than thirty (30) days, copies of the attached Notice to Employees.
5. Notify the Commission in writing within ten (10) days of receipt of this decision of the steps taken to comply therewith.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

/s/ Robert C. Dumont
ROBERT C. DUMONT, Chairman

/s/ Claudia T. Centomini
CLAUDIA T. CENTOMINI, Commissioner

Appeal Rights

Pursuant to M.G.L. c.150E, Section 11, decisions of the Labor Relations Commission are appealable to the Appeals Court of the Commonwealth of Massachusetts. To claim such appeal, the appealing party must file a Notice of Appeal with the Labor Relations Commission within thirty (30) days of receipt of this decision. No Notice of Appeal need be filed with the Appeals Court.

THE COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

NOTICE TO EMPLOYEES

Posted by Order of
The Massachusetts Labor Relations Commission
An Agency of the Commonwealth of Massachusetts

The Massachusetts Labor Relations Commission has determined that the Bridgewater Education Association, Wareham Education Association and the Fairhaven Education Association violated Sections 12 and 10(b)(1) of M.G.L. c.150E by failing to provide the Charging Parties with a local audit for the fiscal years preceding the periods for which the agency service fees referred to in this case, were demanded.

WE WILL NOT do anything that interferes with, restrains, or coerces any employee in the exercise of their rights guaranteed under M.G.L. c.150E.

WE WILL NOT seek the discharge of or any other sanction against any Charging Party for failing to pay an agency service fee for the 1988-89 school year, or against Betsy Ann Wood for the 1987-1988 school year, that was based on the invalid demands.

WE WILL release to the Charging Parties all of the monies held in joint escrow, plus all accrued interest to the date of the dissolution of the escrow account for the agency service fee for the 1988-89 school year, and to Betsy Ann Wood, all of the monies and interest for the agency service fee for the 1987-1988 and 1988-1988 school years.

WE WILL provide a local audit with any demand for a local agency service fee.

_____

Fairhaven Education Association

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Commission's Office, 1604 Leverett Saltonstall Building, 100 Cambridge Street, Boston, Massachusetts (Telephone: 727-3505)

THE COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

NOTICE TO EMPLOYEES

Posted by Order of
The Massachusetts Labor Relations Commission
An Agency of the Commonwealth of Massachusetts

The Massachusetts Labor Relations Commission has determined that the Bridgewater Education Association, Wareham Education Asociation and the Fairhaven Education Association violated Sections 12 and 10(b)(1) of M.G.L. c.150E by failing to provide the Charging Parties with a local audit for the fiscal years preceding the periods for which the agency service fees referred to in this case, were demanded.

WE WILL NOT do anything that interferes with, restrains, or coerces any employee in the exercise of their rights guaranteed under M.G.L. c.150E.

WE WILL NOT seek the discharge of or any other sanction against any Charging Party for failing to pay an agency service fee for the 1988-89 school year, or against Betsy Ann Wood for the 1987-1988 school year, that was based on the invalid demands.

WE WILL release to the Charging Parties all of the monies held in joint escrow, plus all accrued interest to the date of the dissolution of the escrow account for the agency service fee for the 1988-89 school year, and to Betsy Ann Wood, all of the monies and interest for the agency service fees for the 1987-1988 and 1988-1988 school years.

WE WILL provide a local audit with any demand for a local agency service fee.

Bridgewater Education Association

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Commission's Office, 1604 Leverett Saltonstall Building, 100 Cambridge Street, Boston, Massachusetts (Telephone: 727-3505)

THE COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

NOTICE TO EMPLOYEES

Posted by Order of
The Massachusetts Labor Relations Commission
An Agency of the Commonwealth of Massachusetts

The Massachusetts Labor Relations Commission has determined that the Bridgewater Education Association, Wareham Education Association and the Fairhaven Education Association violated Sections 12 and 10(b)(1) of M.G.L. c.150E by failing to provide the Charging Parties with a local audit for the fiscal years preceding the periods for which the agency service fees referred to in this case, were demanded.

WE WILL NOT do anything that interferes with, restrains, or coerces any employee in the exercise of their rights guaranteed under M.G.L. c.150E.

WE WILL NOT seek the discharge of or any other sanction against any Charging Party for failing to pay an agency service fee for the 1988-89 school year, or against Betsy Ann Wood for the 1987-1988 school year, that was based on the invalid demands.

WE WILL release to the Charging Parties all of the monies held in joint escrow, plus all accrued interest to the date of the dissolution of the escrow account for the agency service fee for the 1988-89 school year, and to Betsy Ann Wood, all of the monies and interest for the agency service fee for the 1987-1988 and 1988-1988 school years.

WE WILL provide a local audit with any demand for a local agency service fee.

Wareham Education Association

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Commission's Office, 1604 Leverett Saltonstall Building, 100 Cambridge Street, Boston, Massachusetts (Telephone: 727-3505)

APPENDIX C

GENERAL LAWS OF MASSACHUSETTS

Chapter 150E: Section 12. Service fee; imposition; amount; discrimination.

Section 12. The commonwealth or any other employer shall require as a condition of employment during the life of a collective bargaining agreement so providing, the payment on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is later, of a service fee to the employee organization which in accordance with the provisions of this chapter, is duly recognized by the employer or designated by the commission as the exclusive bargaining agent for the unit in which such employee is employed; provided, however, that such service fee shall not be imposed unless the collective bargaining agreement requiring its payment as a condition of employment has been formally executed, pursuant to a vote of a majority of all employees in such bargaining unit present and voting.

Prior to the vote, the exclusive bargaining agent shall make reasonable efforts to notify all employees in the unit of the time and place of the meeting at which the ratification vote is to be held, or any other method which will be used to conduct the ratification vote. The amount of such service fee shall be equal to the amount required to become a member and remain a member in good standing of the exclusive bargaining agent and its affiliates to or from which membership dues or per capita fees are paid or received. No employee organization shall receive a service fee as provided herein unless it has established a procedure by which any employee so demanding may obtain a rebate of that part of said employee's service

payment, if any, that represents a pro rata share of expenditures by the organization or its affiliates for:

(1) contributions to political candidates or political committees formed for a candidate or political party;

(2) publicizing of an organizational preference for a candidate for political office;

(3) efforts to enact, defeat, repeal or amend legislation unrelated to the wages, hours, standards of productivity and performance, and other terms and conditions of employment, and the welfare or the working environment of employees represented by the exclusive bargaining agent or its affiliates;

(4) contributions to charitable, religious or idealogical causes not germane to its duties as the exclusive bargaining agent;

(5) benefits which are not germane to the governance or duties as bargaining agent, of the exclusive bargaining agent or its affiliates and available only to the members of the employee organization.

It shall be a prohibited labor practice for an employee organization or its affiliates to discriminate against an employee on the basis of the employee's membership, nonmembership or agency fee status in the employee organization or its affiliates.